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RENEE KLEP and A.K.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

RENEE KLEP, individually and as
successor-in-interest to DARIN
KLEP, DECEDENT; A. K., a
minor by her Guardian Ad Litem,
RENEE KLEP,

Plaintiffs,

vs.

COUNTY OF SISKIYOU; CITY
OF MT. SHASTA, a Municipal
entity; CHRIS STOCK, an
individual; RICHARD EVANS; an
individual; WALTER MOORE; an
individual; and JUAN
CASANOVA, an individual,

Defendants.

Case No.

**COMPLAINT FOR DAMAGES
FOR DEPRIVATION OF CIVIL
RIGHTS PURSUANT TO 42
U.S.C. § 1983 (EXCESSIVE
FORCE); INTERFERENCE
WITH THE EXERCISE OF
CIVIL RIGHTS IN VIOLATION
OF THE BANE ACT (CIVIL
CODE § 52.1); BATTERY;
NEGLIGENCE; AND
NEGLIGENT INFLICTION OF
EMOTIONAL DISTRESS**

DEMAND FOR JURY TRIAL

Plaintiffs Renee and A.K. (hereinafter sometimes, collectively, "Plaintiffs") hereby allege as follows:

PARTIES

1. Renee Klep (hereinafter sometimes “Renee”) was, at all material times, the wife of decedent Darin Klep (hereinafter “Darin” or “Decedent”). Renee is and was at all material times a resident of Mt. Shasta, located in Siskiyou County, California. Renee sues both in her individual capacity and in her representative capacity as a successor-in-interest to Decedent pursuant to California Code of Civil Procedure § 377.60. Renee seeks damages for her own injuries, as well as survival and wrongful death damages under federal and California state law.

2. A.K. is the biological daughter of Decedent and Renee. A.K. is a minor. Upon filing the instant complaint, Renee Klep intends to file a motion for the appointment of a Guardian Ad Litem, pursuant to Federal Rules of Civil Procedure Rule 17 and Local Rule 202(a).

3. Plaintiffs allege that Defendant County of Siskiyou (hereinafter sometimes “County”) provides law enforcement through the Siskiyou County Sheriff’s Department (hereinafter sometimes “Siskiyou Sheriff’s Dept.”).

4. Plaintiffs allege that Defendant City of Mt. Shasta (hereinafter sometimes “City” or “Mt. Shasta”) is a municipal entity providing, among other things, law enforcement through the Mt. Shasta Police Department (hereinafter “Department” or “Mt. Shasta P.D.”).

5. Plaintiffs are informed and believe and thereon allege that Defendant Chris Stock (hereinafter sometimes “Stock”) is, and all relevant times was, an “employee” of County/Siskiyou Sheriff’s Dept. and in accordance with California Government Code Section 810.2 with the rank of “Deputy” acting under the color of law within the meaning of 42 U.S.C. Section 1983.

6. Plaintiffs are informed and believe and thereon allege that

1 Defendant Richard Evans (hereinafter sometimes “Evans”) is, and all relevant
2 times was, an “employee” of County/Siskiyou Sheriff’s Dept. and in
3 accordance with California Government Code Section 810.2 with the rank of
4 “Deputy” acting under the color of law within the meaning of 42 U.S.C.
5 Section 1983.

6 7. Plaintiffs are informed and believe and thereon allege that
7 Defendant Walter Moore (hereinafter sometimes “Sergeant Moore” or
8 “Moore”) is, and all relevant times was, an “employee” of City in accordance
9 with California Government Code Section 810.2 with the rank of “Sergeant”
10 acting under the color of law within the meaning of 42 U.S.C. Section 1983

11 8. Plaintiffs are informed and believe and thereon allege that
12 Defendant Juan Casanova (hereinafter sometimes “Officer Casanova” or
13 “Casanova”) is, and all relevant times was, an “employee” of City in
14 accordance with California Government Code Section 810.2 with the rank of
15 “Officer” acting under the color of law within the meaning of 42 U.S.C. Section
16 1983.

17 9. Plaintiffs are ignorant of the true names and capacities of
18 Defendants sued herein as Does 1 through 5, inclusive, and therefore sue these
19 Defendants by such fictitious names. Plaintiffs will amend this complaint to
20 allege their true names and capacities when ascertained. Plaintiffs are informed
21 and believe and thereon allege that each of the fictitiously named Defendants is
22 responsible in some manner for the occurrences alleged in this complaint, and
23 that Plaintiffs’ damages as alleged were proximately and legally caused by the
24 Defendants’ conduct. At all times material herein, each Defendant was the
25 agent, servant and employee of each of the remaining Defendants, and acting
26 within the purpose, scope and course of said Agency, service and employment,
27 with the express and/or implied knowledge, permission and consent of the
28 remaining Defendants, and each of them, and each of said Defendants ratified
and approved the acts of Defendants.

JURISDICTION/VENUE

10. Jurisdiction of this court is founded upon 42 U.S.C. Section 1983. Venue is proper pursuant to 28 U.S.C. § 1400(a), because the defendants or their agents reside or may be found within this district and because defendants transact business, including the alleged tortious acts, within this district.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

11. Plaintiffs have exhausted their administrative remedies by timely filing their governmental tort claims in accordance with California Code Section 910 et seq. City of Mt. Shasta served it notice of rejection of claim, by mail, on September 27, 2022. County of Siskiyou served its notice of rejection of claim, by U.S. Mail, on November 1, 2022.

**FIRST CAUSE OF ACTION FOR DAMAGES FOR
DEPRIVATION OF CIVIL RIGHTS UNDER
42 U.S.C. SECTION 1983**

(Against Defendants Stock, Moore, Casanova, and Evans for Excessive Force – Fourth Amendment of United States Constitution)

12. Plaintiffs hereby adopt, incorporate, and reiterate all of the preceding allegations of this Complaint.

13. On the evening of March 11, 2022, Renee called 911. Units from Mt. Shasta P.D. and Siskiyou Sheriff's Dept. reported to the home address of Renee and Darin Klep, located at 2604 Sean Way, Mt. Shasta, CA 96067 (hereinafter "2604 Sean Way" or "Residence").

14. Renee and Darin had been married for over two (2) years. Darin was a native of Mt. Shasta. He studied CRNA at Southern Oregon University and worked as an ER/ICU Nurse for 27 years. Darin loved the outdoors. He was an avid rock climber, snow skier, runner, hiker, and mountain biker. Darin shared his passion for the outdoors with Renee and their young daughter, A.K., teaching A.K. the basics of rock climbing, taking her on trails on his mountain bike (A.K. in the bucket seat), paddle boarding, and snow skiing. As a family,

1 they traveled everywhere in their R-Pod RV. Even before A.K. was born,
2 Darin set up A.K.'s college fund. Darin was a member of the American Nepal
3 Medical Foundation, an organization advancing healthcare in Nepal.
4 Unfortunately, on this Friday night (March 11 '22) and at the time of Renee's
5 call for service, Darin was not enjoying his out-door pursuits but, rather, had
6 been drinking and was very distraught.

7 15. After Units arrived, Renee exited the front of her home, where she
8 was questioned. Renee advised that Darin was in the backyard. Renee was
9 asked, "Does he [Darin] have a firearm on him?" Renee replied that Darin did.
10 Renee quickly added, "But I don't think he would want to harm anybody but
11 himself."

12 16. Plaintiffs are informed, believe, and allege that Sheriff's Deputy
13 Chris Stock and Mt. Shasta P.D. Sergeant Moore entered the backyard, first,
14 followed by Officer Casanova. Sergeant Moore began to position himself in
15 the vicinity of a swing-set/slide, while Stock positioned himself in front of
16 Darin. Deputy Richard Evans was positioned toward the rear of the Residence,
17 on the opposite side of the Residence near a hot tub. Casanova, at some point,
18 moved past Moore and behind the swing set, to the left of Moore.

19 17. Plaintiffs are informed, believe, and allege that, at some point,
20 Darin was lying on the ground in the backyard, on his back. Plaintiffs are
21 further informed and believe and thereon allege that, at some point, Darin had a
22 handgun in his hand and had the weapon pointed at his head, as he lay down on
23 the ground. As Darin lay on the ground, on his back, Stock, Moore, Casanova,
24 and Evans, all, had lights on Darin, with their weapons out and aimed at Darin.
25 Stock, Moore, and Casanova were, all, at close range, approximately thirty feet
(30') away. Evans was further away. Darin was surrounded.

26 18. Stock began to speak to Darin. As he spoke to Darin, Stock
27 continued to point his light at Darin, as well as having his weapon out and
28 aimed directly at Darin. Darin reacted: "Get that light off me man." Darin

1 repeated his request to have the lights removed.

2 19. Stock responded, “I want to be able to see you, so you can see us.”

3 20. Plaintiffs allege that Stock’s statement was half-correct. Because of
4 the bright lights, Plaintiffs are informed and believe, Darin was unable to see
5 them. Instead, Darin was blinded.

6 21. Despite Darin’s repeated requests to remove the lights, Stock,
7 Moore, and Casanova did not honor Darin’s requests.

8 22. Stock continued, “Tell me what happened tonight?” “What’s
9 making you feel this way?” “Why are you trying to hurt yourself?” These, and
10 other statements/questions made by Stock, Plaintiffs allege, were not consistent
11 with proper protocol, as more fully set forth below.

12 23. Stock then states, “I need you to relax man.” Darin repeats his
13 request, “turn your light off, now.” Again, Darin’s request was ignored by the
14 officers. Stock had nothing to say to Darin, after Stock’s initial comment,
15 about the lights that were all directed at Darin.

16 24. According to video, Darin appears to react to light coming from the
17 direction of Officer Casanova (off to Darin’s right) and repeats, “You see that
18 light?” and asks, “You need to back . . . up.” From video, a bright light
19 appears, again, after which Darin’s upper torso begins to rise up from the
20 ground.

21 25. While, on information and belief, it appears that a gun was in
22 Darin’s right hand as his upper torso began to rise from the ground, Plaintiffs
23 allege that the weapon was *not* pointed at any officer/deputy/anyone else at any
24 time. Rather, Plaintiffs allege, video shows that Darin was in the process of
25 propping himself up and not in the process of taking aim at anyone.

26 26. As Darin’s upper torso began to rise, Moore, Casanova, Stock, and
27 Evans fired, immediately, rapidly, and repeatedly, at Darin, striking him at
28 least thirteen (13) times in his head, neck, chest, abdomen, pelvis, and left
upper extremity. Plaintiffs are informed and believe that at least twenty-two

1 (22) rounds, or more, were fired in total. Before firing, on information and
2 belief, no verbal warnings were given to Darin.

3 27. Plaintiffs calculate that approximately six (6) minutes (or less)
4 transpired in between the time law enforcement entered the back yard and the
5 time the four (4) officers identified above (Stock, Moore, Casanova, and Evans)
6 commenced firing. On information and belief, Stock's attempt to negotiate
7 with Darin may have lasted for a shorter period of time, i.e., less than five (5)
8 minutes.

9 28. Plaintiffs allege that the use of deadly force was not objectively
10 reasonable under the circumstances. Among other things, time and distance
11 were on the side of law enforcement. Plaintiffs allege that the officers
12 involved, including Defendants herein, failed to employ proper procedures for
13 dealing with a person threatening suicide. Among other things, Defendants
14 (with the exception of Evans) failed to get to positions of safety, and, instead,
15 placed themselves in close proximity, without cover. By surrounding Darin
16 with lights and with weapons drawn/aimed directly at Darin, Defendants
17 unnecessarily confronted Darin, *increased* Darin's anxiety, and exacerbated the
18 situation, culminating in the use of deadly force. In particular, Plaintiffs allege
19 that Stock, the negotiator, aimed his weapon at Darin while attempting to
20 negotiate. This tactic directly contradicted proper protocol, making it
21 impossible to successfully negotiate with Darin, as it sent a conflicting message
22 to Darin. Further, Plaintiffs allege, many statements/questions posed by Stock
23 to Darin were contrary to protocol and were counterproductive.

23 ***No Qualified Immunity***

24 29. Plaintiffs allege that Darin possessed the right, guaranteed by the
25 Fourth Amendment of the United States Constitution, to be free from
26 unreasonable seizures and excessive force. The Fourth Amendment, made
27 applicable to the States by the Fourteenth Amendment, ensures the rights of
28 individuals to be free from unreasonable searches and seizures. At the time of

1 the above use of force, the contours of the law concerning reasonable use of
2 force in similar circumstances, including without limitation the appropriate
3 tactics for dealing with the mentally ill, were clearly established. Plaintiffs
4 allege that, at all material times, Defendants had knowledge of the above rights
5 under the Constitution.

6 30. Plaintiffs allege that the lethal use of force was not justified under
7 the circumstances and was excessive. Claimants allege that there was no threat
8 or danger to public safety, justifying the extreme use of force use. Plaintiffs
9 allege that Defendants engaged in conduct that was either willful or was done
10 with deliberate indifference to Plaintiffs' rights; therefore, such conduct was not
11 objectively reasonable and a reasonable official in those circumstances would
12 understand that what he/she was doing violated the law, as more fully set forth
13 herein.

14 31. As a direct and proximate result, as alleged above, Plaintiffs are
15 entitled to damages, including without limitation those damages afforded under
16 California Code of Civil Procedure Section 377.61 (wrongful death), which
17 include, without limitation, pecuniary loss (loss of decedent's financial
18 support/lost wages) and non-pecuniary damages, and damages afforded under
19 California Code of Civil Procedure Section 377.34, as well as attorney's fees
20 under 42 U.S.C. Section 1988.

21 32. Plaintiffs are further informed, believe, and allege that above-
22 described acts of the above Defendants/peace officers depriving Decedent of
23 his constitutionally protected rights, privileges, and immunities were done with
24 reckless or callous indifference to Decedent's rights. Accordingly, Plaintiffs
25 seek and award of punitive damages against the individual peace officers
26 involved in Decedent's seizure/death.
27
28

**SECOND CAUSE OF ACTION FOR INTERFERENCE WITH THE
EXERCISE OF CIVIL RIGHTS IN VIOLATION OF THE BANE ACT
[CALIFORNIA CIVIL CODE § 52.1]**

**(Against County of Siskiyou, City of Mt. Shasta, and Their Peace
Officers/Employees/Defendants Stock, Moore, Casanova, and Evans)**

33. Plaintiffs hereby adopt, incorporate, and reiterate all of the preceding allegations of this Complaint.

34. Under the Bane Act, it is unlawful for a person or persons, whether or not acting under color of law, to interfere by threat, intimidation, or coercion, or “attempt” to interfere by threat, intimidation, or coercion, with the exercise or enjoyment of one’s rights secured by the Constitution or laws of the State.

35. Plaintiffs allege that City, County, and their peace officers, including Defendants Stock, Moore, Casanova, and Evans, violated Decedent’s rights under the Bane Act, as they exerted excessive force, without any justification, as more fully set forth herein.

36. Plaintiffs allege that the peace officers involved applied excessive force with the specific intent of depriving Decedent of his right under the Fourth Amendment of the Constitution to be free of unlawful seizures.

37. Plaintiffs allege that, a direct and proximate result of the above, they have standing to recover damages under the Bane Act, in an amount according to proof. Plaintiffs further allege that they are entitled to recover treble damages against City/County/Peace Officers, pursuant to California Civil Code Section 52.1(c).

38. Claimants further allege that the individual peace officers were guilty of malice and oppression as defined under California Civil Code Section 3294, and Claimants should recover, in addition to actual damages, punitive damages to make an example of and to the individual peace officers.

**THIRD CAUSE OF ACTION FOR DAMAGES FOR
BATTERY**

**(Against County of Siskiyou, City of Mt. Shasta, and Their Peace
Officers/Employees/Defendants Stock, Moore, Casanova, and Evans)**

39. Plaintiffs hereby adopt, incorporate, and reiterate all of the preceding allegations of this Complaint.

40. Plaintiffs allege that the peace officers shot and “seized” Decedent, as more fully set forth above.

41. Plaintiffs allege that Decedent did not consent to the physical contact, as more fully described above.

42. Decedent was harmed by the contact, as more fully set forth above, which was the proximate cause of Decedent’s injuries and damages herein.

43. A reasonable person in Decedent’s position would have been offended by the Peace Officers’ nonconsensual physical contact.

44. County and City are liable for the above actions of their employees, pursuant to California Government Code Section 815.2(a).

45. Plaintiffs further allege that the peace officers involved were guilty of malice and oppression as defined under California Civil Code Section 3294, and Claimants should recover, in addition to actual damages, punitive damages to make an example of the individual peace officers.

**FOURTH CAUSE OF ACTION FOR DAMAGES FOR
NEGLIGENCE**

**(Against County of Siskiyou, City of Mt. Shasta, and Their Peace
Officers/Employees/Defendants Stock, Moore, Casanova, and Evans)**

46. Plaintiffs hereby adopt, incorporate, and reiterate all of the preceding allegations of this Complaint.

47. Plaintiffs allege that the peace officers involved, including Defendants Stock, Moore, Casanova, and Evans, owed a duty to Decedent and to them and breached that duty.

1 48. City, County, and their peace officers, including Defendants Stock,
2 Moore, Casanova, and Evans, were negligent by taking the actions described
3 above, as well as omitting important, relevant tactics. These include, but are
4 not limited to, the failure to properly assess the threat, the failure to bring in
5 appropriate assets (including crisis intervention), the failure to
6 adequately/properly communicate and coordinate amongst the officers on
7 scene, and the failure to employ proper tactics/protocols in confronting an
8 individual threatening suicide. As alleged hereinabove, the officers involved
9 failed, among other things, to get to positions of safety, failed to slow events
10 down (rather than speeding them up), and failed in their attempt to successfully
11 negotiate with Darin Klep, by pointing their weapons directly at Klep (which
12 sent a confusing, conflicting message and which lost Klep's trust).

13 49. Plaintiffs were harmed as a result.

14 50. As a direct and proximate result of City and its Peace
15 Officers/Employees' negligence, Plaintiffs suffered harm, as more fully
16 described above.

17 51. City and County are liable for the above actions of their employees,
18 pursuant to California Government Code Section 815.2(a).

19 **FIFTH CAUSE OF ACTION FOR DAMAGES FOR**
20 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

21 **(Against County of Siskiyou, City of Mt. Shasta, and Their Peace**
22 **Officers/Employees/Defendants Stock, Moore, Casanova, and Evans)**

23 52. Plaintiffs hereby adopt, incorporate, and reiterate all of the
24 preceding allegations of this Complaint.

25 53. Plaintiffs allege that the peace officers involved owed a duty to
26 Decedent and to them and breached that duty.

27 54. City, County, and their peace officers (including Defendants Stock,
28 Moore, Casanova, and Evans) were negligent by taking the actions described
above. Plaintiffs allege that they were present at the scene of the injury-

1 producing event at the time it occurred, and contemporaneously perceived the
2 injury-producing event and its traumatic consequences.

3 55. Plaintiffs were harmed as a result, suffering severe emotional
4 distress.

5 56. As a direct and proximate result of City and its Peace
6 Officers/Employees' negligence, as more fully set forth herein, Plaintiffs
7 suffered harm.

8 57. City and County are liable for the above actions of their employees,
9 pursuant to California Government Code Section 815.2(a).

10 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each
11 of them, as follows:

- 12 1. For general damages in an amount according to proof;
- 13 2. For all damages permissible under California Code of Civil
14 Procedure Section 377.60 (wrongful death), including without limitation for
15 loss of support, loss of services, funeral and burial expenses, and loss of
16 companionship;
- 17 3. For all damages permissible under California Code of Civil
18 Procedure Section 377.34 (Survival Action), including without limitation for
19 pain and suffering, as well as punitive damages (against individual defendants);
- 20 4. For punitive damages against non-municipal defendants;
- 21 5. For attorney's fees pursuant to 42 U.S.C. Section 1988 and
22 California Civil Code Section 52.1(i);
- 23 6. For prejudgment interest;
- 24 7. For costs of suit incurred herein; and

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26 ///

27 ///

DATED: February 14, 2023 LAW OFFICES OF PHILIP J. KAPLAN

Complaint
Case No.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial in this action pursuant to Federal Rules of Civil Procedure, Rules 38 and 81.

Dated: February 14, 2023

LAW OFFICES OF PHILIP J. KAPLAN

/s/Philip J. Kaplan

PHILIP J. KAPLAN

Attorney for Plaintiffs

RENEE KLEP and A.K.